

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Application of:

Moore, et al

Application No.: 09/576359

Filed: May 22, 2000

For: SYSTEM AND METHOD FOR
CREATING AND DISPLAYING
CLASSES OF GRAPHICAL
DISPLAY OBJECTS

Group Art Unit: 2173

Confirmation No. 1848

Examiner: Vu, Kleu D.

APPELLANTS' BRIEF

TO THE COMMISSIONER FOR PATENTS:

This communication is submitted in response to the Final Office Action dated February 24, 2006 and the Notice of Appeal filed on May 24, 2006 pertaining to the captioned patent application identified above.

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I. REAL PARTY IN INTEREST

The rights of the inventors in this application have been assigned to RealNetworks, Inc. of Seattle, Washington.

II. RELATED APPEALS AND INTERFERENCES

Applicants, applicants' legal representative, and the above-identified assignee are unaware of other appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in the present appeal.

III. STATUS OF THE CLAIMS

Claims 14-15, 25-26, 28-29, 34-35, and 38 are currently pending.¹ Applicants appeal the rejection of each of these claims.

IV. STATUS OF AMENDMENTS

As requested by the Examiner, a full set of claims as currently entered is attached in Appendix A. These claims include minor typographical amendments requested in an amendment submitted along with the initial Appellants' Brief. Applicants' response to the final rejection, filed on, April 5, 2006, was entered and considered, but was not deemed to place the application in condition for allowance.

V. SUMMARY OF CLAIMED SUBJECT MATTER

A. Claim 14

Independent Claim 14 defines an apparatus comprising a storage medium on which a plurality of programming instructions are stored that enable a media player of the apparatus to perform several steps. A media player is a type of program for which the graphical display objects are created; however, the media player is only one of several different types of programs for which graphical display objects can be created. (See page 5, lines 12-16). One example of the type of media program for which a graphical display object can be created is the RealJukebox® program. (See page 5, lines 16-18).

As defined in this claim, the stored instructions enable a media player to receive “an identifier of a graphical display object.” In one embodiment, an “identifier” is a name of the graphical display object. However, the graphical display object may be identified in other manners in different embodiments, such as by a manually entered ID, an automatically generated ID, an icon, and a sound. (See page 10, lines 26-30). In an embodiment, the “graphical display object” is a Skin created for the RealJukebox® program. (See page 5, line 15-16).

The instructions recited in this claim also enable a media player of the apparatus to “retrieve default definition data of a class related to the graphical display object, the class default

¹ Appendix A of this brief contains a copy of Claims 14-15, 25-26, 28-29, 34-35, and 38.

definition data having default values for a first plurality of elements of the graphical display object.” This aspect of this claim is described on page 10 with respect to the build display process 414 shown in Figure 4. This process “retrieves the class default definition related to the graphical display object from the graphical display object database 430...” (See page 10, line 30 to page 11, line 1). The build display process 414 uses values in the retrieved class default definition. (See page 11, lines 3-5). These “values” from the class default definition data comprise the first plurality of elements recited in this claim.

Additionally, the instructions recited in the claim enable a media player of the apparatus to “retrieve custom definition data related the graphical display object, the custom definition data having custom values for a second plurality of elements of the graphical display object, one or more of the first and second elements being the same elements.” This aspect of the claim is described on page 11, lines 1-3, which states that “In state 630, the build display process 414 retrieves the graphical display object’s definition from the graphical display object database 430...” (See page 11, lines 1-3). The build display process 414 uses the values in the graphical display object’s definition and these “values” are the “custom values for a second plurality of elements of the graphical display object” that are recited in this claim.

The claim also recites a media player that is enabled by the instructions to “build the graphical display object based first, on the custom values of the second plurality of elements and then, on the default values of the first plurality of elements that are not included among the second plurality of elements.” This aspect of the claim is described in the specification on page 11, lines 3-8, which states that “In state 640, the build display process 414 uses the values in the graphical display object’s definition to create and/or populate the display for each value in the definition and proceeds to a state 650. In state 650, the build display process 414 uses the default values to create and/or populate the display for each value not in the graphical display object definition and proceeds to an end state 600.” (Emphasis added).

Finally, this claim recites a processor for the apparatus embodiment that is coupled to the storage medium to execute the programming instructions. The inclusion of a processor enables the utility of the claimed invention and is within the scope of the embodiments contemplated by the statement “While certain embodiments of the invention have been described, these embodiments have been presented by way of example only, and are not intended to limit the scope of the present invention.” (See page 13, lines 1-4). Thus, the breadth and scope of the invention were intended to be determined with respect to the recited claims and their equivalents. (See page 13, lines 5-6).

B. Claim 15

This independent claim defines a method comprising several steps, each of which are referred to in Figure 6. The first recitation of this method involves “receiving by a media player operating on an electronic device, an identifier of a graphical display object.” As discussed above with respect to Claim 14, a “name” is an identifier for a graphical display object (See page 10, lines 26-30) and the receiving of this name is shown at step 610 in Figure 6. The retrieving of “class default definition data” related to the graphical display object is shown at step 620 in Figure 6. The retrieving of “custom definition data related to the graphical display object” is shown at step 630 in Figure 6. The building by the media player of “the graphical display object based first, on the custom values of the second plurality of elements” is shown at step 640 of Figure 6. Lastly, the step of building the graphical display object with default values after building first with the

custom values is shown at step 650 in Figure 6. The “default values” are retrieved with the class default definition data by the build display process 414 (shown at step 640 in Figure 6) and the “default values” are retrieved with the custom definition data by the build display process 414 (shown at step 650 in Figure 6).

C. Claim 25

Dependent claim 25 depends from Claim 14 and defines an apparatus “wherein the graphical display object relates to a graphical user interface object.” The graphical display object relates to a graphical user interface object in the manner described with respect to the graphical display object module. (See page 9, lines 9-17). In particular, the graphical display object module 410 “works with the graphical user interface 420 to allow the user to create graphical display objects and to present graphical display objects to the user.” (See page 9, lines 13-15). The “works with” relationship provides the descriptive support for the “relates to” relationship set forth in this claim.

D. Claim 26

Dependent Claim 26 depends from Claim 25 and recites an apparatus “wherein the graphical user interface object includes one or more selected from the group consisting of buttons, windows, menus, and touch sensitive screens.” This aspect of the claim is described in the specification with respect to the graphical user interface. (See page 11, lines 21-30). Specifically, this portion of the description states that the graphical user interface 420 “may be implemented as....software with the appropriate interfaces which allow a user to access data through the use of stylized screen elements such as, for example, menus, windows, dialog boxes, toolbars, and/or controls (e.g., radio buttons, check boxes, sliding scales, etc.).” (See page 11, lines 27-29).

E. Claim 28

Dependent Claim 28 depends from Claim 15 and defines a method wherein “the graphical display object relates to a graphical user interface object.” As indicated with respect to Claim 25, the graphical display object relates to a graphical user interface object in the manner described with respect to the graphical display object module. (See page 9, lines 9-17). In particular, the graphical display object module 410 “works with the graphical user interface 420 to allow the user to create graphical display objects and to present graphical display objects to the user.” (See page 9, lines 13-15). The “works with” relationship provides the descriptive support for the “relates to” relationship set forth in this claim.

F. Claim 29

Dependent Claim 29 depends from Claim 28 and defines a method wherein “the graphical user interface object includes one or more selected from the group consisting of buttons, windows, menus, and touch sensitive screens.” As indicated with respect to dependent Claim 26, this aspect of Claim 29 is described in the specification with respect to the graphical user interface. The description states, in pertinent part, that the user interface 420 “may be implemented as....software with the appropriate interfaces which allow a user to access data through the use of stylized screen elements such as, for example, menus, windows, dialog boxes, toolbars, and/or controls (e.g., radio buttons, check boxes, sliding scales, etc.).” (See page 11, lines 27-29).

G. Claim 34

Dependent Claim 34 depends from Claim 14 and recites an apparatus “wherein the media player is an audio player.” The specification refers to an embodiment “described in the context of classes of graphical display objects for an audio music playing device.” (See page 5, line 11-12). The specification identifies a specific audio music playing device, the RealJukebox® program, in one embodiment which is an “audio player” as defined by this claim.

H. Claim 35

Dependent Claim 34 depends from Claim 15 and recites a method “wherein the media player is an audio player.” The specification refers to an embodiment “described in the context of classes of graphical display objects for an audio music playing device.” (See page 5, line 11-12). The specification identifies a specific audio music playing device, the RealJukebox® program, in one embodiment which is an “audio player” as defined by this claim.

I. Claim 38

Dependent Claim 38 depends from Claim 14 and an apparatus that is one of a selected group of devices. The specification refers to these claimed aspects of the apparatus with text which states that “While the term user computer is used, it is recognized that in other embodiments, the graphical display object system 400 may be implemented on other systems such as, for example, a portable computing device, a portable audio player, a portable video player, a server, a computer workstation, a local area network of individual computers, an interactive television, an interactive kiosk, a personal digital assistant, an interactive wireless communications device, a handheld computer, a telephone, a router, a satellite, a smart card, an embedded computing device, or the like.” (See page 8, lines 19-25).

VI. GROUNDINGS OF REJECTION TO BE REVIEWED ON APPEAL

Whether the Examiner erred in rejecting Claims 14, 15, 25, 26, 28, 29, 34, 35 and 38 as being obvious under 35 U.S.C. §103(a) over *Takahashi et al.* in view of *Swanson*?

VII. ARGUMENT

A. Relevant Case Law

In each of the rejections presented above and asserted in the Office Action, the Examiner has attempted to use the pending application to define the problem to be solved by reference to different elements from the prior art. The Federal Circuit has clearly indicated that any attempt to selectively cull from the prior art to fit a claimed invention is prohibited. In this regard, the Board is directed to the following decisions of the Federal Circuit:

When the Board does not explain the motivation, or the suggestion or teaching, that would have led the skilled artisan at the time of the invention to the claimed invention as a whole, we infer that the Board used hindsight to conclude that the invention was obvious...To reach a non-hindsight driven conclusion as to whether a person having ordinary skill in the art at the time of the invention would have viewed the subject matter as a whole to have been obvious in view of

multiple references, the Board must provide some rationale, articulation, or reasoned basis to explain why the conclusion of obviousness is correct. *In re Kahn*, 441 F.3d 977, 78 U.S.P.Q.2d 1329 (Fed. Cir. 2006).

[D]etermination of obviousness cannot be based on the hindsight combination of components selectively culled from the prior art to fit the parameters of the patent invention. There must be a teaching or suggestion within the prior art, within the nature of the problem to be solved, or within the general knowledge of a person of ordinary skill in the field of the invention, to look to particular sources, to select particular elements, and to combine them as combined by the inventor. *Crown Operations Intern., Ltd. v. Solutia Inc.*, 289 F.3d 1367, 62 U.S.P.Q.2d 1917 (Fed. Cir. 2002).

Although the suggestion to combine references may flow from the nature of the problem, defining the problem in terms of its solution reveals improper hindsight in the selection of the prior art relevant to obviousness. Therefore, when determining the patentability of a claimed invention which combines two known elements, 'the question is whether there is something in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination'... We cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. *Ecolochem, Inc. v. Southern California Edison Co.*, 227 F.3d 1361, 56 U.S.P.Q.2d 1065 (Fed. Cir. 2000). (quoting *Lindemann Maschinenfabrik GMBH v. American Hoist*, 730 F.2d 1452, 221 U.S.P.Q. 481 (Fed. Cir. 1984)). (Emphasis added).

Obviousness may not be established using hindsight. In determining obviousness, the invention must be considered as a whole and the claims must be considered in their entirety. *Kahn v. General Motors Corp.*, 135 F.3d 1472, 45 U.S.P.Q.2d 1608 (Fed. Cir. 1998).

It is impermissible...to engage in a hindsight reconstruction of the claimed invention, using the applicant's structure as a template and selecting elements from references to fill the gaps. The references themselves must provide some teaching whereby the applicant's combination would have been obvious. *In re Gorman*, 993 F.2d 982, 18 U.S.P.Q.2d 1885 (Fed. Cir. 1991).

In reviewing the decisions of the Board which are based on...obviousness grounds, our focus must be whether "the differences between the subject matter sought to be patented and the prior art are such that the *subject matter as a whole* would have been obvious at the time the invention was made." *In re Kaslow*, 707 F.2d 1366, 217 U.S.P.Q. 1089 (Fed. Cir. 1983).

In view of the foregoing, applicants respectfully request reconsideration and withdrawal of the rejections of independent Claims 14 and 15. In addition, applicants suggest that Claims 25, 26, 34 and 38, which depend directly or indirectly from Claim 14, are patentably distinct over the combination of *Takahashi et al.* in view of *Swanson*. Applicants further suggest that Claims 28,

29 and 35 which depend directly or indirectly on independent Claim 15 are also patentably distinct over the cited references.

B. Grouping of Claims

In the following discussion, the pending claims are grouped according to statutory class. Specifically, a first group is comprised of Claims 14, 25, 26, 34 and 38 which collectively are directed to the apparatus embodiment of the present invention (referred to below as “**Group I**”). A second group comprised of Claims 15, 28, 29 and 35 is collectively directed to the method embodiment of the present invention (referred to below as “**Group II**”).

1. Group I Claims

The Examiner erred in rejecting all claims in Group I on obviousness grounds under 35 U.S.C. §103(a) of the U.S. Patent Act. This section of the statute states the following:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, *if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.* (Emphasis added).

Independent Claim 14 reads as follows:

An apparatus comprising a storage medium having stored thereon a plurality of programming instructions designed to enable a media player of the apparatus to receive an identifier of a graphical display object; receive default definition data of a class related to the graphical display object, the class of default definition data having default values for a first plurality of elements of the graphical display object; retrieve custom definition data related to the graphical display object, the custom definition data having custom values for a second plurality of elements of the graphical display object, one or more of the first and second elements being the same elements; build the graphical display object based first, on the custom values of the second plurality of elements and then, on the default values of the first plurality of elements that are not included among the second plurality of elements; and a processor communicatively coupled to the storage medium to execute the programming instructions. (Emphasis added).

It has long been established that a determination of the obviousness of an invention requires consideration of the claimed invention as a whole, not merely the differences between the claimed invention and the prior art. *Lear Sigler, Inc. v. Aeroquip Corp.*, 733 F.2d 881, 221 U.S.P.Q. 1025 (Fed. Cir. 1984). Each and every recitation in a claim must be considered in the context of the claimed invention as a whole, not as a collection of individual recitations.

Here, the cited patent references do not teach, suggest or describe each recitation of independent Claim 14. Specifically, the cited patent references do not teach, suggest or describe an apparatus comprising a storage medium that is designed to enable a media player of the apparatus to “build a graphical display object based first, on the custom values of the second plurality of elements and then, on the default values of the first plurality of elements that are not included among the second plurality of elements....” (Emphasis added). In contrast, *Takahashi et al.* describe a system control apparatus having a panel view setting menu object for creating a graphical display of a control panel. In order to create a control panel, each object included in the panel must be

created from data in either a “default” file or a “custom” file (see col. 21, lines 8-20). No teaching or suggestion is provided in this reference for creating a graphical display object such as a control panel for this apparatus that is comprised of elements having both default values and custom values.

Indeed, the reference explicitly teaches away from the claimed recitation. In a representative example, the reference states with regard to the switching of a view for a graphical display object like a control panel that “in the case of a default setting, since the system director object 205 reads the digital VTR delegate object description file named ‘Default’ and generates the digital VTR control panel object, the digital VTR control panel display picture is displayed in its default state and the panel view setting menu is set to ‘Default.’” (Col. 21, lines 37-39). The reference continues by indicating that “if a user selects ‘Custom1’ of the panel view setting menu with the cursor of the pointing device, the panel view setting menu object sends the message ‘Create object with file ‘Custom1’” to the system director object....In response to the message, the system director object discards and regenerates the digital VTR delegate object through the multimedia device delegate object generating means.” (Col. 21, lines 39-47) (Emphasis added). Evidently, a graphical display object such as a control panel produced using this apparatus could not be comprised of data from both a default file and a custom file. Instead, a file created from data in a default file would necessarily have to be discarded and regenerated anew using data from a custom file.

Swanson does not overcome the limitations of *Takahashi et al.* with respect to an apparatus that enables a media player to build a graphical display object based first on custom values and then on default values that are not included among the custom values. As stated earlier, *Swanson* describes a graphical resource editor for selectively modifying graphical resources in a software application that includes a main window graphical user interface object for interaction with the graphical resource editor. In the process of creating a graphical display object, the resource editor will search a predetermined path for an application specific app-custom file. In the absence of such a custom file, the resource editor will use a default app-custom file. If neither file can be found, then an error message will be displayed in a pop-up window. Nothing in this reference suggests that the resource editor would search for values in the default app-custom file when an application specific app-custom file is found from an initial search along a predetermined search path. Furthermore, there is no suggestion in this reference that a graphical display object would be built from values included in both a default app-custom file and an application specific app-custom file even if both types of files existed and were accessible along a predetermined search path.

Accordingly, neither *Takahashi et al.* nor *Swanson*, alone or in combination, teach, suggest or disclose this recitation of Claim 14. Furthermore, the combination of references does not teach, suggest or disclose each recitation of dependent Claims 25, 26, 34 and 38 when the recitations of each claim are considered as a whole in view of their dependency from independent Claim 14.

2. Group II Claims

The Examiner erred in rejecting all claims in Group II on obviousness grounds under 35 U.S.C. §103(a) of the U.S. Patent Act. Independent Claim 15 reads as follows:

A method comprising: receiving by a media player operating on an electronic device, an identifier of a graphical display object; retrieving by the media player, default definition data

of a class related to the graphical display object, the class default definition data having default values for a first plurality of elements of the graphical display object; retrieving by the media player, custom definition data related to the graphical display object, the custom definition data having custom values for a second plurality of elements of the graphical display object, one or more of the first and second elements being the same elements; and building by the media player, the graphical display object based first, on the custom values of the second plurality of elements and then, on the default values of the first plurality of elements that are not included among the second plurality of elements. (Emphasis added).

As discussed previously, a long line of case law decisions from the Federal Circuit has established that a determination of the obviousness of an invention requires consideration of the claimed invention as a whole, not merely the differences between the claimed invention and the prior art. In the inquiry, each and every recitation in a claim must be considered in the context of the claimed invention as a whole, not as a collection of individual recitations.

The cited patent references do not teach, suggest or describe each recitation of independent Claim 15. Specifically, the cited patent references do not teach, suggest or describe the method step of “building by the media player, the graphical display object based first, on the custom values of the second plurality of elements and then, on the default values of the first plurality of elements that are not included among the second plurality of elements.” (Emphasis added). *Takahashi et al.* describe a system control method which employs a plurality of peripheral devices represented as objects, a controller for unitarily controlling the plurality of peripheral devices, and a common bi-directional interface which provides connectivity between the controller and the peripheral devices. Control of the peripheral devices would be achieved through use of a control panel, which is itself a graphical display object whose shape and function can be defined and created by a user. As discussed previously, a panel view setting menu object can be employed to create a graphical display of the control panel. However, each object included in the panel must be created from data in either a “default” file or a “custom” file (see col. 21, lines 8-20). No teaching or suggestion is provided in this reference of a method for building a graphical display object such as a control panel that comprises first custom values and then default values for the elements included in this graphical object.

Indeed, the reference explicitly teaches away from the claimed recitation. In a representative example, the reference states with regard to the switching of a view for a graphical display object like a control panel that “in the case of a default setting, since the system director object 205 reads the digital VTR delegate object description file named ‘Default’ and generates the digital VTR control panel object, the digital VTR control panel display picture is displayed in its default state and the panel view setting menu is set to ‘Default.’” (col. 21, lines 37-39). The reference continues by indicating that “if a user selects ‘Custom1’ of the panel view setting menu with the cursor of the pointing device, the panel view setting menu object sends the message “Create object with file ‘Custom1’” to the system director object....In response to the message, the system director object discards and regenerates the digital VTR delegate object through the multimedia device delegate object generating means.” (col. 21, lines 39-47) (Emphasis added). Evidently, a method for building a graphical display object such as a control panel could not include data from both a default file and a custom file. Instead, a file created from data in a default file would necessarily have to be discarded and regenerated anew using data from a custom file.

Swanson does not overcome the limitations of *Takahashi et al.* with respect to a method that comprises building by the media player a graphical display object based first on custom values

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and then on default values that are not included among the custom values. As stated earlier, *Swanson* describes a graphical resource editor for selectively modifying graphical resources in a software application that includes a main window graphical user interface object that interacts with the graphical resource editor. In the process of creating a graphical display object, the resource editor will search a predetermined path for an application specific app-custom file. In the absence of such a custom file, the resource editor will use a default app-custom file. If neither file can be found, then an error message will be displayed in a pop-up window. Nothing in this reference suggests that the resource editor would search for values in the default app-custom file when an application specific app-custom file is found from an initial search along the predetermined path. Furthermore, there is no suggestion that a method for building a graphical display object would involve a media player and that values from both a default app-custom file and an application specific app-custom file would be used to create the graphical display object even if both types of files existed and were accessible along the predetermined path.

Accordingly, neither *Takahashi et al.* nor *Swanson*, alone or in combination, teach, suggest or disclose this recitation of Claim 15. Furthermore, the combination of references does not teach, suggest or disclose each recitation of dependent Claims 28, 29 and 35 when the recitations of each claim are considered as a whole in view of their dependency from independent Claim 15.

VIII. SUMMARY

Applicants submit that all pending claims are in condition for allowance. Accordingly, early and favorable action allowing all of the pending claims and passing this application to issue is respectfully requested.

Respectfully submitted,
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Date: September 28, 2006

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CLAIMS APPENDIX

14. An apparatus comprising:
- a storage medium having stored thereon a plurality of programming instructions designed to enable a media player of the apparatus to
 - receive an identifier of a graphical display object;
 - receive default definition data of a class related to the graphical display object, the class default definition data having default values for a first plurality of elements of the graphical display object;
 - retrieve custom definition data related the graphical display object, the custom definition data having custom values for a second plurality of elements of the graphical display object, one or more of the first and second elements being the same elements;
 - build the graphical display object based first, on the custom values of the second plurality of elements and then, on the default values of the first plurality of elements that are not included among the second plurality of elements; and
 - a processor communicatively coupled to the storage medium to execute the programming instructions.
15. A method comprising:
- receiving by a media player operating on an electronic device, an identifier of a graphical display object;
 - retrieving by the media player, default definition data of a class related to the graphical display object, the class default definition data having default values for a first plurality of elements of the graphical display object;
 - retrieving by the media player, custom definition data related to the graphical display object, the custom definition data having custom values for a second plurality of elements of the graphical display object, one or more of the first and second elements being the same elements; and
 - building by the media player, the graphical display object based first, on the custom values of the second plurality of elements and then, on the default values of the first plurality of elements that are not included among the second plurality of elements.
25. The apparatus of Claim 14, wherein the graphical display object relates to a graphical user interface object.

26. The apparatus of Claim 25, wherein the graphical user interface object includes one or more selected from the group consisting of buttons, windows, menus, and touch sensitive screens.

28. The method of Claim 15, wherein the graphical display object relates to a graphical user interface object.

29. The method of Claim 28, wherein the graphical user interface object includes one or more selected from the group consisting of buttons, windows, menus, and touch sensitive screens.

34. The apparatus of Claim 14, wherein the media player is an audio player.

35. The method of Claim 15, wherein the media player is an audio player.

38. The apparatus of Claim 14, wherein the apparatus is a selected system one from the group consisting of a portable computing device, a portable audio player, a portable video player, a server, a computer workstation, a local area network of individual computers, an interactive television, an interactive kiosk, a personal digital assistant, an interactive wireless communication device, a handheld computer, a telephone, a router, a satellite, a smart card, and an embedded computing device.

EVIDENCE APPENDIX

1. U.S. Patent No. 5,603,034 to *Swanson*. was entered in the record by the Examiner on page 2 of the Official Action dated February 24, 2006, and on the accompanying Notice of References Cited (Form PTO-892).
2. U.S. Patent Number 5,887,193 to *Takahashi et al.* was entered in the record by the Examiner on page 2 of the Official Action dated February 24, 2006, and on the accompanying Notice of References Cited (Form PTO-892).

RELATED PROCEEDINGS APPENDIX

NONE.